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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: JAN 12 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Poland who entered the United States and was admitted as a visitor with authorization to remain until March 30, 1992. There is no evidence that the applicant applied for any other lawful status in the United States until April 30, 2001, when she applied for adjustment of status based on her marriage to a U.S. citizen. The applicant was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (conspiracy to commit burglary). The record indicates that the applicant is married to a U.S. citizen and that she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the applicant's husband will suffer emotional trauma, and his depression will worsen if the applicant is removed. In support of his assertion, counsel submits a letter written by Dr. [redacted] M.D.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > > (iii) the alien has been rehabilitated; or
> >
> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission

would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was convicted of conspiracy to commit burglary in 1998, which is less than 15 years prior to the adjudication of her application for adjustment of status. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. She is however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel asserts that the medical evidence, including a letter and copies of prescriptions for the applicant's husband, establishes that the applicant's husband's mental health is in a negative state that rises to the level of extreme hardship. Dr[redacted] in a letter dated November 28, 2003, wrote that the applicant's husband had been under his care for approximately one month and had received biweekly therapy sessions, indicating that Dr. [redacted] had treated the applicant's husband on a maximum of three visits. Dr[redacted] prescribed several medications for depression, anxiety, and insomnia. The doctor wrote that the applicant's husband had improved somewhat due to the treatment he received, but that he was still anxious and depressed.

Dr.[redacted] letter did not indicate that the applicant's husband was unable to function, to work, to care for himself, or to carry out normal activities. The letter stated that the applicant's husband's condition might worsen if the applicant is removed. Dr.[redacted] did not write that the applicant's husband was at risk or would be at risk in the future of harming himself or anyone else. In sum, the applicant's husband appears to be experiencing an unfortunate but not extreme consequence of stress related to the applicant's immigration difficulties.

Counsel submitted no information regarding any hardship the applicant's spouse would experience if he were to accompany her to Poland. The AAO, therefore, also finds that the applicant has not established that her spouse would suffer extreme hardship if he were to relocate to Poland with her.

The AAO takes note of counsel's explanations regarding the applicant's troublesome relationship with her ex-boyfriend. Her involvement with that individual, however, whether the district director misinterpreted information in that regard or not, has no bearing on these proceedings.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.